

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)
)
 Service Rules for the 746-764 and 776-794)
 MHz Bands, and Revisions to Part 27 of the)
 Commission's Rules.)

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

WT Docket No. 99-168

To: The Commission

**REPLY COMMENTS OF APCO
 REGARDING REQUEST FOR CLARIFICATION**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following reply to comments filed in response to its "Request for Clarification" of rules adopted in the *Second Report and Order* in the above-captioned proceeding, FCC 00-90 (released March 9, 2000), regarding frequency coordination between Guard Band Managers and Public Safety Frequency Coordinators in the 700 MHz band.¹

APCO has requested that the Commission clarify its new 700 MHz Guard Band frequency coordination rules to specify that if a Public Safety Coordinator informs the Guard Band Manager within the ten (10) day notification period of a potential for interference with either a current or planned Public Safety Band operation, the Guard Band Manager must defer use of the subject frequencies until it and the Public Safety Coordinator reach a mutually satisfactory resolution. Only two comments were filed in

¹ The Request for Clarification was filed on March 23, 2000. A *Public Notice* of the Request is published at 65 Fed. Reg. 31316 (May 17, 2000).

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response to the APCO's request, and both indicate general agreement that the current rule requires clarification.

The Industrial Telecommunications Association, Inc. ("ITA") "agrees with APCO that further clarification as to notification procedures may be necessary," though ITA suggests that such clarification should be deferred until after the Guard Band auction and an opportunity for the Guard Band Managers to develop coordination procedures with the Public Safety Coordinators. APCO concurs that the specific details of coordination procedures (*e.g.*, the method of notification, the specific content of the notification, the process for resolving disputes) can and probably should be developed between the ultimate Guard Band Managers and the Public Safety Coordinators, and thus could wait until after the auction.

However, the Commission needs to clarify *prior* to the auction that Guard Band Managers will need to do much more than simply "notify" Public Safety Coordinators of impending facilities. The Commission must ensure that prospective Guard Band Managers understand that a Public Safety Coordinator will have the right to object to a proposed Guard Band operation, and that such operations may not proceed until the Public Safety Coordinator and the Guard Band Manager reach a mutually satisfactory resolution or, if necessary, the matter is decided by the Commission. The specifics of how that coordination process works can be left for future discussion, but the basic principles governing the process need to be set forth prior to the auction.

The Personal Communications Industry Association ("PCIA") states in its "Partial Opposition" that it "appreciates and supports APCO's desire to have procedural rules clearly established prior to the implementation of service" and that it "is comfortable with

a procedure whereby a Public Safety coordinator could object to the implementation of a Guard Band system during the ten day notification period.” PCIA appears to accept the principle that Guard Band operations may not commence until the objections of the Public Safety coordinator are resolved, though it urges the Commission to impose deadlines “on its own processes whereby it will render a decision on a dispute.” APCO is hopeful that the vast majority of Public Safety Coordinator objections will be quickly resolved without any Commission intervention. However, where Commission action is required, APCO certainly supports expedited consideration.

While PCIA supports the need for clarification of the coordination requirement, it objects to APCO’s efforts to protect “future” public safety facilities from interference by Guard Band operations. Desperate for a pejorative term, PCIA goes so far as to suggest that the “public safety industry” is attempting to “warehouse spectrum.” First, the concept of spectrum warehousing (a policy that APCO abhors as it prevents vital public safety agencies from obtaining the spectrum they need to protect lives and property) is irrelevant in this context as the entire 764-776/794-806 MHz band has been allocated for exclusive public safety use, pursuant to an unusually specific congressional requirement. Second, PCIA fails to recognize that unless so-called “future” public safety facilities are protected, those facilities can never be built and significant portions of the 764-776/794-806 MHz band will be unavailable to public safety users, violating an express congressional mandate.

Protecting future public safety users in the 700 MHz band is particularly important as Guard Band facilities are likely to be in place well before most public safety operations in the band. This is partly due to the historic “extended implementation”

issues that affect all state and local government communications systems (*e.g.*, multiple layers of administrative approval and the need to follow multi-year funding cycles). There are also timing issues that have particular relevance to the 700 MHz band, such as (a) the prerequisite that Regional Planning Committees (“RPCs”) first complete detailed plans for each of the 55 FCC-designated regions; (b) the interoperability and digital requirements imposed by the Commission which require final standards approval before public safety radio equipment is available; and (c) the problems posed by television broadcast operations on many of the channel 60-69 frequencies. Other than the TV issue, Guard Band Managers will not face similar impediments to their use of the 700 MHz band.²

Therefore, Public Safety Coordinators need to be able to object to those proposed Guard Band facilities that would pose a threat of interference to planned, but not yet licensed public safety operations. This obviously includes public safety applicants, but must also extend to future public safety facilities that will operate pursuant to Regional Plans. In most instances, the FCC-sanctioned RPCs will allot specific frequencies to particular “zones” or specific users within each region. The National Institute of Justice has agreed to fund and maintain a centralized database of all Regional Plans, in conjunction with the National Public Safety Telecommunications Council and each of the Public Safety Coordinators. Thus, a Public Safety Coordinator, upon receipt of a Guard Band Manager’s “notification,” will be able to access the relevant Regional Plan (or Plans in areas near Regional boundaries) and determine whether the proposed Guard

² Although, in some instances a Guard Band licensee may be able to initiate operations immediately, whereas public safety operations may be blocked by a TV station (either co-channel or on the adjacent channel “opposite” from the Guard Band).

Band operation would pose a potential for interference to public safety frequencies “planned” for use in the same geographic area. Where there is such a potential for interference, resolution could involve modifications either to the proposed Guard Band use or to the Regional Plan (which will require RPC approval). However, allowing the Guard Band operation and Regional Planning to proceed without early coordination is a recipe for disaster.

To the extent that Guard Band notifications occur before the finalization of a relevant Regional Plan, the Public Safety Coordinator will be able to forward the information contained in the notification to the RPC for its consideration in its ongoing planning process. In some instances, a RPC may be far enough along to recognize the proposed Guard Band operation as a significant impediment to public safety use of the 700 MHz band, in which case the RPCs objections could be reviewed by the Public Safety Coordinator and, if appropriate and timely, incorporated into a formal objection to the Guard Band Manager.

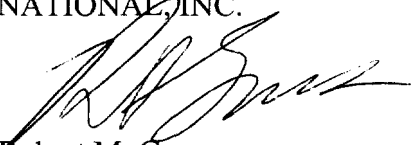
CONCLUSION

For the reasons discussed above and in its Request for Clarification, the Commission must clarify at the basic principles governing its Guard Band Manager/Public Safety frequency coordination process.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
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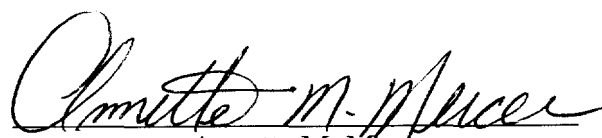
CERTIFICATE OF SERVICE

I, Annette M. Mercer, legal secretary in the law office of Shook, Hardy & Bacon, do hereby certify that on this 1st day of June, 2000, a copy of the foregoing document "Reply Comments of APCO Regarding Request for Clarification" was mailed, postage pre-paid, to the following:

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